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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Scott J. Tuman

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EXAMINER

TSOY, ELENA

ART UNIT

PAPER NUMBER

1792

NOTIFICATION DATE

DELIVERY MODE

06/05/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 09/822,651	Applicant(s) TUMAN ET AL.	
	Examiner Elena Tsoy	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 71-79,81-83,85-90 and 92-115 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 71-79,81-83,85-90 and 92-115 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/25/08</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Amendment filed on April 14, 2008 has been entered. Claims 71-79, 81-83, 85-90, and 92-115 are pending in the application.

Claim Objections

1. Objection to claims 71, 83 and 94 because of the informalities has been withdrawn due to amendment.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 71-79, 81-83, 85-90, 92-115 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 10-21, 285 of U.S. Patent No. US 6,503,855 for the reasons of record set forth in paragraph 3 of the Office Action mailed on 12/12/2007.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 109, 111, and 114-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al (US 5,669,120) for the reasons of record set forth in paragraph 7 of the Office Action mailed on 12/12/2007 because amendment addressed only formal matters.

7. Claims 71-79, 81-83, 86-90, 92-106, and 108-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al in view of Allen et al for the reasons of record set forth in paragraph 8 of the Office Action mailed on 12/12/2007.

8. Claims 71-79, 81-83, 86-90, 92-106, and 108-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al in view of Allen et al and Provost et al (US 5606781) for the reasons of record set forth in paragraph 9 of the Office Action mailed on 12/12/2007.

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9. Claims 85, 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al in view of Allen et al/Wessels et al in view of Allen et al and Provost et al/, further in view of Murasaki (US 5,643,651) for the reasons of record set forth in paragraph 9 of the Office Action mailed on 4/13/2006.

Response to Arguments

10. Applicants' arguments filed April 14, 2008 have been fully considered but they are not persuasive.

(A) Rejection of claims 109, 111, 114, and 115 over Wessels et al

Applicants argue that Wessels et al. does not disclose or suggest a substrate in the form of a "film" before the polymer forming the hooks is forced through the pores of the substrate S as asserted by the Examiner. Rather, the polymer layer 4a is formed at the same time as the hooks 4b as described in Wessels et al. at Column 7. As a result, Wessels et al. do not teach a polymer "film" that is separate from the hook elements 4b. The polymer used to form the hook elements 4b is that same polymer used to form the substrata 4a.

The Examiner respectfully disagrees with this argument. First of all, rejected claims also do not recite a polymer "film" that is *separate* from the hook elements 4b". Second, Wessels et al. does show at Fig. 5 forming a substrate in the form of a "film" 4 *before* forming the hooks. Third, the polymer forming the polymeric regions does not extend *through* the substrate for at least the reason that only **upper portion** in only discrete regions of the formed substrate film 4 is used for forming hooks. Forth, following applicants logic, in claimed invention the molten polymer applied to a **fibrous** (Claim 75), **porous** (Claim 76), **woven** (Claim 77), **knit** (Claim 79) substrate and *pressed* (See Applicants Figs. 5-6 would extend *through* the substrate. Applicants' specification teaches also that in case when the web 10 itself contains loop structures, as claimed in claims 73, woven and non-woven fibers are used (See Published Application, P23).

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(B) Rejection of claims 71-79, 81-83, 86-90, 92-106, and 108-115 over Wessels et al in view of Allen

Applicants argue that the asserted obviousness rejection of claims 71-79, 81-83, 86-90, 92-106, and 108-118 does not address claimed feature in any meaningful manner in connection with any of the obviousness rejections identified above. Instead the Examiner relies on the teachings of column 10, lines 53-60 of Wessels et al. as support for an assertion that Wessels et al. discloses or suggests changing the shape and/or spacing of the polymer regions containing the hooks. Applicants respectfully disagree and have reproduced the cited portion of Wessels et al.

The argument is unconvincing because Applicants did not address in any meaningful manner Wessels et al **combined** with Allen. It is well settled that one cannot show nonobviousness by attacking references *individually* where the rejections are based on **combinations** of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(C) Rejection of claims 71-79, 81-83, 86-90, 92-106, and 108-115 over Wessels et al in view of Allen and Provost

Applicants submit that Provost et al. are cited to provide evidence that, e.g., hooks can be integrally molded with a base, can be co-extruded with a base, or can be provided on a thin base and laminated to a different sheet to form a substrate (Office Action delivered 12 December 2007, page 6, line 16 to page 7, line 2. Applicants submit, however, that Provost et al fail to provide elements missing from the combination of Wessels et al. and Allen et al. For example, Provost et al. fail to provide a plurality of discrete polymeric regions fused (or attached, claims 114 and 115) to the first major surface of the substrate, wherein each discrete polymeric region is entirely bordered or surrounded by the first major side of the substrate (claims 71, 83, 94, 109, and 111- 115) nor do Provost et al. teach or suggest an elastic substrate (claims 83 and 110).

The argument is unconvincing because by Applicants own admission, Provost et al. is a secondary reference which is cited to provide an **evidence** that hooks can be integrally molded with a base, can be co-extruded with a base, or can be provided on a thin base and laminated to a different sheet to form a substrate. Note that all claimed limitations were shown to be obvious over Wessels et al *combined* with Allen, which Applicants failed to discuss above in (B).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is 571-272-1429. The examiner can normally be reached on Monday-Friday, 9:00AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Elena Tsoy, Ph.D.

Primary Examiner

Art Unit 1792

June 3, 2008

/Elena Tsoy /

Primary Examiner, Art Unit 1792